

MINUTES
Montana Fish, Wildlife & Parks Commission Meeting
Helena FWP Headquarters – 1420 East 6th Avenue
Helena, MT
NOVEMBER 29, 2007

Commission Members Present: Steve Doherty, Chairman; Shane Colton, Vice-Chair; Vic Workman; Dan Vermillion; Willie Doll.

Fish, Wildlife & Parks Staff Present: Jeff Hagener, Director, and FWP Staff.

Guests: See November 29, 2007 Commission file folder for those who signed in.

A Work Session followed the meeting to describe and update the Commissioners on the Blackfoot Community Project, and the American Prairie Foundation made a presentation

Topics of Discussion:

1. Call to Order - Pledge of Allegiance
2. Approval of Commission Meeting Minutes of October 25, 2007
3. Approval of November 20, 2007 Commission Conference Call Minutes
4. Approval of Commission Expenses through October, 2007
5. 2008 Commission Calendar – Final
6. Timber Management Projects – West Shore, Finley Point, and Lake Mary Ronan State Parks - Final
7. Brown Valley Conservation Easement – Final
8. Dalton Mountain Conservation Easement (Nevada Lake)– Final
9. Grosfield Easement – Endorsement
10. Hodges Acquisition – Endorsement
11. Jamison Acquisition – Endorsement
12. Carroll Vandalia Acquisition – Endorsement
13. Shipp Easement – Endorsement
14. Griffith Land Trade – Pablo/Ninepipes - Endorsement
15. Elk Island / Wolf Island Conservation Easement - Endorsement
16. Turkey Transplant - Southwest Bearspaw Mountain (Blaine Co.)– Endorsement
Turkey Transplant - Missouri River Floodplain (South of Ulm) – Endorsement
17. Urban Deer – Final
18. Lake Helena FAS - Endorsement
19. Paradise FAS Acquisition – Final
20. Tripp/Bearmouth Clark Fork River FAS Donation – Endorsement
21. Big Creek Water Rights Acquisition – Endorsement
22. Cedar Creek Water Rights Acquisition – Endorsement
23. Shields River Water Rights Acquisition – Endorsement
24. Water Petition Process
 - * Swan Lake No Wake Zone Petition - Tentative
 - * Echo Lake near Big Fork No Wake Zone Petition - Tentative
 - * Echo Lake in Granite County No Wake Zone Petition - Tentative
25. Open Microphone – Public Opportunity to Address Additional FWP Issues

1. Opening - Pledge of Allegiance. Chairman Doherty called the meeting to order at 8:30 a.m. and led the Pledge of Allegiance.

2. Approval of October 25, 2007 Commission Meeting Minutes.

Action: Colton moved and Workman seconded the motion to approve the October 25, 2007 minutes. Motion carried

3. Approval of November 20, 2007 Commission Conference Call Minutes.

Action: Vermillion moved and Workman seconded the motion to approve the November 20, 2007 minutes. Motion carried.

4. Approval of October, 2007 Commission Expenses.

Action: Colton moved and Workman seconded the motion to approve the October expenses as presented. Motion carried.

5. 2008 Commission Calendar – Final. Workman recommended holding all Commission meetings in Helena as public involvement at regional meetings is minimal, and travel by FWP staff creates added expense to the Department. Vermillion felt that although attendance by the public is sparse at regional meetings, it is important for the Commission to provide the opportunity. Colton said he would like to see a meeting held in Miles City.

Doherty asked the Department to itemize expenses involved in conducting regional meetings and bring that information to the December meeting, after which a decision will be made as to whether or not it is plausible to hold meetings outside of Helena. The Department will also develop a list of potential regional meeting sites and points of interest for field tours.

Action: Colton moved and Vermillion seconded the motion to approve the proposed 2008 meeting dates, and directed the Department to provide an outline of regional meeting sites for consideration at the December meeting. Motion carried.

Action: Workman moved to hold all 2008 Commission meetings in Helena. The motion failed due to the lack of a second.

6. Timber Management Projects – West Shore, Finley Point, and Lake Mary Ronan State Parks – Final. Joe Maurier, FWP Parks Division Administrator, explained that FWP engages in ongoing timber management practices within state parks, primarily those located in northwestern Montana. Private forestry professionals are hired to manage the project, and consultants are hired to write forestry prescriptions to promote the health of the forest, to remove hazardous trees, and to provide safe fire zones. As the cutting and selling of timber is a real property right, Commission approval is required. Payment to the successful bidder is through timber salvage. Three supportive comments were received following distribution of the EA.

Action: Workman moved and Vermillion seconded the motion to approve the Department's proposal to proceed with the prescribed timber management projects at Lake Mary Ronan, West Shore, and Finley Point State Parks. Motion carried.

7. Brown Valley Conservation Easement – Final. Ken McDonald, FWP Wildlife Division Administrator, explained that this 204-acre parcel is adjacent to the Three Mile Wildlife Management Area, and would be an addition to the existing Brown Valley Conservation Easement. It includes critical habitat for wildlife, and includes two miles of stream in Bitterroot Valley. Mrs. Brown is offering the land as a tribute to her late husband at a cost of \$220 per acre. The purchase would be paid for with Habitat Montana funds. The public, the Ravalli County Fish & Wildlife Association, and the Ravalli County Commission support this proposal.

Action: Workman moved and Colton seconded the motion to approve the purchase of the Brown Valley Conservation Easement as proposed. Motion carried.

8. Dalton Mountain Conservation Easement (Nevada Lake) – Final. Ken McDonald, FWP Wildlife Division Administrator, noted that this easement, also known as the Nevada Lake project, is part of the overall Blackfoot project. FWP secured nearly \$1.4 million of Forest Legacy money through the Forest Service to fund this project.

If approved, the proposed plan of action is for The Nature Conservancy to purchase and temporarily hold the 2,220 acres, which has already been done, and then FWP would use the Forest Legacy funds to purchase conservation easements on the Plum Creek lands and on the forested portions of the Mannix Ranch. The Mannix Ranch would then donate at least 25% of the appraised easement value as match to the Forest Legacy funding. The conservation easement would require a Forest Stewardship Plan to provide livestock grazing and guarantee reasonable public access for spring, fall, and winter hunting seasons in perpetuity.

Action: Workman moved and Vermillion seconded the motion to authorize the Department to complete the Dalton Mountain Conservation Easement as proposed. Motion carried.

9. Grosfield Easement – Endorsement. Ken McDonald, FWP Wildlife Division Administrator, explained that this proposal is for the purchase of a perpetual conservation easement on the 5,993-acre Swamp Creek Angus Ranch, owned by Arne Grosfield, along the southwest edge of the Crazy Mountains near Big Timber. The property borders the Gallatin National Forest and consists of two riparian stream bottoms, sagebrush uplands, and timbered hills. Recreational opportunities on nearby private lands are generally allowed for a fee, or are prohibited. This easement would provide another route for hunters, anglers, and recreationists to access Forest Service lands. The land has been well managed, and elk, deer, bear, wolverine, and other wildlife inhabit the area.

Action: Colton moved and Vermillion seconded the motion to endorse the pursuit of a negotiated conservation easement with Arne Grosfield on his Swamp Creek Angus Ranch. Motion carried.

10. Hodges Acquisition – Endorsement. Ken McDonald, FWP Wildlife Division Administrator, explained this proposal is to purchase 52 acres of land between Thompson Falls and Plains, fee title, from DeeDee Hodges. This site provides vital habitat and winter range for bighorn sheep and mule deer, and steep cliffs provide critical lambing areas for bighorn sheep. Between forty and eighty sheep inhabit the area, as do several species of waterfowl, rough grouse, bear, hawks and golden eagles, and the occasional mountain lion. The property includes a seven-acre wetland area, a pond, bushes, and cottonwood and quaking aspen trees. The appraisal came in at \$500,000 - sheep auction funds would be expended for the purchase.

Action: Workman moved and Colton seconded the motion to authorize the Department to proceed with negotiations to acquire the Dee Dee Hodges property in fee title. Motion carried.

11. Jamison Acquisition – Endorsement. Ken McDonald, FWP Wildlife Division Administrator, explained that this proposal is for acquisition of 280 acres, fee title, within the fall-winter-spring range of the Anaconda bighorn herd, which is also heavily used by mule deer and elk. The property borders the Beaverhead-Deer Lodge National Forest on two sides, and is near the Blue-Eyed Nellie, Lost Creek, and Garrity WMAs. The landowner, Cheri Jamison, is considering sale of the property for development and subdivision. This acquisition would expand FWP's management control of winter range for the Anaconda bighorn herd. Comments have all been in support of the purchase.

Funding for this project would come from FWP's bighorn sheep license auction account in the amount of approximately \$750,000. Five Valleys Land Trust, the American Land Conservancy, and FNAWS have all expressed their willingness to assist in this endeavor, including bridge financing if needed. The landowner is not interested in a conservation easement.

Action: Workman moved and Doll seconded the motion to endorse the Department's proposal to cooperate with Five Valleys Land Trust, American Land Conservancy, and the Foundation for North American Wild Sheep to pursue the purchase of the Jamison tract. Motion carried.

12. Carroll Vandalia Acquisition – Endorsement. Ken McDonald, FWP Wildlife Division Administrator, explained that the 4,600-acre Carroll-Vandalia Ranch is a working cattle ranch located five miles southeast of Hinsdale along the Milk River in Valley County. A total of 1,400 acres are situated along 10.6 miles of the Milk River, which includes timbered riparian and wetland habitats intermixed with irrigated alfalfa and grain fields. Adjacent uplands include 3,400 acres of shrub grasslands and wooded draws. The ranch is important habitat for mule and white-tailed deer, sage and sharp-tailed grouse, pheasants, waterfowl, fish, fifteen threatened & endangered species, and ten Montana species of concern.

The proposed fee-title acquisition is a cooperative effort between FWP and the Montana Department of Natural Resources and Conservation, and would utilize funds from both agencies. FWP proposes to use Habitat Montana funds.

Mary Sexton, DNRC Director, stated that this is a beneficial piece of property for which the Land Board has already granted preliminary approval. She encouraged the continued cooperative effort the two agencies have shared over the last few years, and encouraged taking advantage of opportunities such as this one for the benefit of future generations. She urged the Commission to endorse this proposal.

Action: Vermillion moved and Workman seconded the motion to endorse the Department's proposal to cooperate with DNRC in the purchase of the Carroll-Vandalia Ranch. Motion carried.

13. Shipp Easement – Endorsement. Ken McDonald, FWP Wildlife Division Administrator, said this proposed conservation easement is another part of the Milk River Initiative project. The 154-acre Theresa Shipp Ranch is located 1.5 miles northwest of Glasgow along the Milk River in Valley County. The property includes timbered riparian habitat and wetlands along 1.4 miles of the Milk River and 0.7 miles of Brazil Creek. The grain fields, riparian cover, and Milk River make this ranch important to white-tailed deer, pheasants, waterfowl, fish, two threatened/endangered species, and six Montana state species of concern. Upland Game Bird dollars in conjunction with SWG funds will be used to secure the easement which is estimated to sell for \$500-\$600 dollars per acre.

Action: Colton moved and Workman seconded the motion to endorse the Department's proposal to purchase a conservation easement from Theresa Shipp. Motion carried.

14. Griffith Land Trade – Pablo/Ninepipes – Endorsement. Ken McDonald, FWP Wildlife Division Administrator, explained that FWP is proposing to trade 4 parcels of dry-land pasture (322 acres) that are part of the Pablo WMA to Mr. Alan Griffith for 160 acres of wetlands directly adjacent to Ninepipes WMA. The Griffith 160-acre property is worth \$440,000 to \$520,000, and FWP's 322 acres is worth \$498,000 to \$608,000, so the transaction should be a fairly even trade. The Pablo WMA is a federally acquired property and its disposal or trade will need FWS approval. The Flathead Reservation Fish and Wildlife Board and Tribal Wildlife Staff have been supportive of pursuing this project

Action: Doll moved and Workman seconded the motion that the Department proceed with negotiations to acquire the Griffith property in fee title in exchange for the identified Pablo WMA parcels. Motion carried.

15. Elk Island / Wolf Island Conservation Easement – Endorsement. Ken McDonald, FWP Wildlife Division Administrator, stated that this proposal is for the purchase of a conservation easement on 204 acres of land owned by the Hagler families on Wolf Island. This would be done in conjunction with the fee title purchase of 276.5 acres of Yellowstone River bottomland adjacent to Elk Island WMA owned by Barbara Hagler and endorsed by the Commission on September 27.

Wolf Island is jointly owned by the Haglers (204 acres), FWP (161 acres) and the BLM (200 acres), and FWP leases Crittenden Island (486 acres) from DNRC. Both islands support intact cottonwood riparian systems. A conservation easement, and the development of a long-term conservation and management plan on the private portion of Wolf Island, is crucial to maintaining and enhancing the fish, wildlife and recreational values of the entire island, and in conjunction with the fee title purchase of the 275 acres on Elk Island, will protect important riparian and river bottom habitat.

Action: Colton moved and Workman seconded the motion to endorse the purchase of a conservation easement on 204 acres of land on Wolf Island that is owned by the Hagler family. Motion carried.

16. Turkey Transplants - Southwest Bearspaw Mountain (Blaine Co.) and Missouri River Floodplain (South of Ulm) – Endorsement. Jeff Herbert, FWP Wildlife Division Assistant Administrator, explained that both proposals would be cooperative efforts with the Wild Turkey Federation and local sportsmen. The Department needs authority to move forward should depredation conditions occur. The EA process is underway for both proposals. The National Wild Turkey Federation will play a large role in helping trap, transport, and release turkeys. Landowners in both areas assure access.

Action: Workman moved and Vermillion seconded the motion to endorse the Bearspaw Mountain and Missouri River Floodplain turkey transplant projects contingent upon favorable outcome of their respective EA public reviews Motion carried.

17. Urban Deer – Final. Director Hagener introduced this topic saying many concerns have been expressed, and questions have been raised recently concerning the urban deer issue. Other communities are watching to see what happens.

Chris Smith, FWP Chief of Staff, explained that HB249 authorizes the city to develop a management plan. In 2006, the city established a task force to develop the management plan. The task force conducted a public poll that indicated the city was divided on the issue. The process follows that FWP and the Commission review the plan and make recommendations, after which a public comment period follows. The Commission then either accepts or rejects the plan. The city is only responsible for public health and safety issues, while FWP has broader management mandates.

Smith pointed out that the process has been a learning experience for both the City of Helena and FWP. The statute fragments management authority. FWP is responsible for the state's wildlife, wherever it exists. Both the city and FWP lack resources needed to implement urban management, however the city has now allocated \$30,000 for plan implementation. The decision to authorize the city to remove deer triggers MEPA (Montana Environment Policy Act) whose initial requirement for compliance falls on FWP to approve the City's plan. It is hoped that the county will join in the partnership. As the plan develops, operational details will need to be specified. The proposal now is to remove 50 deer, which will provide experience in culling techniques.

Ken McDonald, FWP Wildlife Division Administrator, stated that Gayle Joslin of FWP was involved in the development of the plan. He said when the task force originally decided on the population objective, it was derived from a census of deer within the city limits conducted by a hired biologist. The quota of 350 came from that census and included projected growth. That number has been controversial. This first year will be a pilot project. He said FWP field staff respond to calls, so the Department already expends dollars toward the urban deer situation, and will continue to do so.

Workman asked if investigations were conducted to determine if the aggressive deer were harassed before the incident. He said you can't put a lot of weight on a poll because you can get people to agree with anything if it is asked right. A vote or mail-out survey to all city residents would be more effective. He asked how many man-hours had been expended already on urban deer. McDonald replied that a quarter of Gayle Joslin's time, plus \$20,000-\$30,000 hours of staff time were expended.

Tim Burton, Helena City Manager, said the city never wanted sole authority to manage wildlife – the city does not have the expertise to manage wildlife. Detail will need to be worked out if the Commission agrees to the proposal. The incremental process will be best – the city is not ready for a cull situation. Whatever is successfully developed here should be applicable to other cities as well.

Doll said if the deer that have already been dispatched are figured in, the quota of 350 is nearly reached. The proposed time period to remove the 50 deer is not during the two naturally aggressive seasons. Will the deer that are selected to be killed be from a random selection? How will they be removed so as not to be a public spectacle?

Burton replied that the details have yet to be worked out. Sites have not been selected, however the golf course experiences interaction with deer and people.

Colton questioned rumors that there is a standoff with law enforcement. Is the city still cooperating with FWP? Burton said it is status quo, that there has been no line drawn in the sand.

Doherty asked why removal must be by lethal means. Hagener replied it is the most cost effective, and because of the possibility of transplanting a disease.

Action: Vermillion moved and Colton seconded the motion to direct the department to assist the City of Helena with further refinement and implementation of the Helena Deer Management Plan, provided that no department operating funds will be spent beyond those necessary for technical assistance and for response to incidents involving immediate threats to public safety, and provided that the City is authorized to remove up to 50 deer during the period December 15, 2007 through May 1, 2008. I further move the Commission direct the department to work with the City of Helena to develop recommendations for the commission and/or the 2009 legislative session to improve collaboration, clarify roles and responsibilities and identify appropriate funding sources for urban wildlife management.

Chairman Doherty asked for public comment.

Eric Griffin, Helena, urged the Commission to support the recommendation.

Virginia Niccolucci, Helena, said she served on the urban task force and nobody came in with the idea of loving the deer or hating the deer. They determined what people want. She said their recommended quota of 350 took into consideration birth and death rates.

Steve Gilbert, Helena, urged the Commission to think of the “can of worms that will be opened and where will it go from here”. All of the larger Montana cities will want help, and that will require a tremendous outlay of FWP personnel time. He asked if the City has investigated the problems created by the issuance of all of the building and subdivision permits for all of the development that has, and is, occurring. Development is intruding on wildlife habitat. He asked if the City provides any education on flowers, yards etc. for coexistence with the deer. Do 50 deer in all the communities have to be killed off year after year? He encouraged asking a lot more questions.

Chuck Hunter, Helena, supports the motion. He has watched the problem grow, and feels it is a health and safety problem. Experiment and learn.

Gregory Morgus, Helena, said he was not included in the survey. He would like to see some kind of vote or initiative to see what the majority opinion really is. He is not convinced that 80 percent of the people want to kill the deer. He is a retired mailman who has walked the neighborhoods for years and never encountered an aggressive deer, and since retirement continues to walk and still has not seen aggressiveness by deer. He is not convinced that human/deer interactions are major problems. “We are not ready for this”.

Workman said he is one hundred percent against this proposal. He is convinced that the majority of people are not in favor of this cull, it’s just that the smaller segment is very vocal. He questioned how many deer were harassed before they became aggressive. He feels the City should educate the populous so they recognize and understand the two times of year when deer may be aggressive, and to

avoid them. There are moose, elk, deer, and even bear in Whitefish, and they are not a problem. This scenario has been reactionary. The calls he has received, and the responses that he has read suggest that the majority of Helena people are against this plan. FWP has already spent between \$25,000-\$30,000 plus man-hours on this issue, and there are better uses for staff's time. It is a waste of time and money.

Colton replied that it is not for the Commission to determine whether there is a problem or not. The City already has determined there is, so it is the Commission's responsibility to approve or disapprove the City's plan. There is no choice but to try this with the hope it is a viable option. There has been a public process. He agrees that staff has many other duties, but a lot of money has already been invested.

Vermillion said the revised, scaled down proposal makes more sense if it is to be used as a blueprint for the state. Everyone has learned a lot through this process, and more will be learned in another six months.

Doll said that if this plan is approved, the City needs to educate the people on the times of year when deer can become aggressive. He does not want this situation to snowball across the state. The \$30,000 is not going to be anywhere near what will be needed in the future. He will support it one time only to see if it works, then the City should be mandated to provide the citizens an opportunity to vote to see what their opinion is rather than listening to only a few people and the City Council.

Doherty said he would like to see a public vote conducted, and would like the city and schools to provide educational and outreach programs to avoid aggressive deer. Is it a problem of health and safety – they are being dealt with as they have in the past. There needs to be zoning and fencing. A woman spoke at the last meeting about deer resistant plants. He will support the plan to cull 50 deer this time, but the Commission will need to be informed about the MEPA analysis and other considerations before the next time.

Action. Motion carried. Four in favor – one opposed (Workman).

Action: Colton moved and Workman seconded the motion that from this point forward when the Department must engage with municipalities that the Commission be involved at the very beginning. Motion carried.

18. Lake Helena FAS – Endorsement. Chris Hunter, FWP Fisheries Division Administrator, explained that Lake Helena is a 2,100-acre lake that receives 6,300 angler days each year. The only boat access is a small corner at the Causeway that has a primitive grass/gravel slope into the water. Lewis and Clark County has deemed this site unsafe and it will be closed in the near future leaving no public access to Lake Helena.

The proposed 5-acre access site is located on the north shore of Lake Helena. The Bureau of Reclamation owns the site, which is administered by the Helena Valley Irrigation District. An MOU would be developed between the three agencies for long-term management and use of this site. The primary funding source for development is PPL-MT and the Missouri-Madison River Fund.

Action: Doll moved and Vermillion seconded the motion to direct the Department of Fish, Wildlife and Parks to pursue negotiations with the Bureau of Reclamation and Helena Valley Irrigation District in order to utilize and develop the Lake Helena Access Site in the Helena Valley. Motion carried.

19. Paradise FAS Acquisition – Final. Chris Hunter, FWP Fisheries Division Administrator, said that FWP is proposing to purchase a fishing access site on the Clark Fork River at Paradise in Sanders County, with 4.29 acres in fee title for \$170,000, and an additional adjacent 8.31 acres in a permanent no-cost public recreational access lease, for a total of 12.6 acres. FWP is developing a float corridor on the Clark Fork from Missoula to Thompson Falls, with 16 sites now in place as well as accesses operated by other entities. This site would address one of the existing gaps. This site sits 1.6 miles downstream from the confluence of the Flathead River and is 7.2 miles downstream from the USFS Cascade access on the Clark Fork, 5.4 miles downstream from the FWP Robertson Creek FAS on the Flathead River, and 6.1 miles upstream from a county access at Plains. This site would help establish a better distribution of fishing use and promote the river as a float/fish corridor, providing opportunities for fishing, hiking, picnicking, bird watching, and waterfowl hunting.

Action: Colton moved and Doll seconded the motion to direct Montana Fish, Wildlife & Parks to enter into a purchase and lease agreement with Bridger Bischoff for the Paradise site for use as a fishing access site. Motion carried.

20. Tripp / Bearmouth Clark Fork River FAS Donation – Endorsement. Chris Hunter, FWP Fisheries Division Administrator, explained that Gene Tripp wishes to donate 22 acres on the upper Clark Fork River for use as a fishing access site, and he wants to do it this year for tax purposes. In order for Mr. Tripp to make this donation this calendar year, a qualified third party must take temporary title to the property until FWP can complete the public process. Five Valleys Land Trust will take possession and hold it until FWP can finalize the transaction.

Action: Vermillion moved and Colton seconded the motion to endorse the Department's proposal to proceed with the public process to accept this 22-acre donation. Motion carried.

21. Big Creek Water Rights Acquisition – Endorsement. Chris Hunter, FWP Fisheries Division Administrator, stated that FWP entered into two water right leases on Big Creek, which is a tributary to the Yellowstone River. One lease provides for 10 cfs of instream flow and expires in May, 2009, and the second lease provides an additional 1 cfs, and expires in April, 2020. The greatest value of the 1 cfs lease is in reducing the overall competition for water on Big Creek and making the larger 10 cfs lease work more effectively. Prior to the inception of the water leases on Big Creek, the stream regularly dried up due to irrigation diversions, eliminating or severely reducing spawning and recruitment of Yellowstone Cutthroat trout.

The original lease was with the Bar S Ranch, but since that time the Bar X Ranch has been divided into two ownerships. One landowner owns 72% of the water rights, and the other landowner owns 28 % of the water rights. The owner with 28 percent of the water rights wants to subdivide his property, but wants to sell the water rights to FWP, while the other landowner is still interested in leasing to FWP.

Action: Vermillion moved and Colton seconded the motion to endorse the proposal that Montana Fish, Wildlife and Parks Staff research, develop and negotiate the terms of the acquisition of the privately owned water rights offered to FWP on Big Creek and to negotiate with the co-owner of the privately-owned water rights the terms for the water rights ultimate disposition in support of instream flow on Big Creek. Motion carried.

22. Cedar Creek Water Rights Acquisition – Endorsement. Chris Hunter, FWP Fisheries Division Administrator, explained that FWP currently leases water rights from the U.S. Forest Service (1.3 cfs) and a private landowner (1.7 cfs) on Cedar Creek, which is a tributary to the Yellowstone River near Corwin Springs. These water right leases provide 3.0 cfs of instream flow to provide sufficient water for Yellowstone Cutthroat trout spawning, incubation and fry migration to the Yellowstone River.

Action: Doll moved and Vermillion seconded the motion that Montana Fish, Wildlife and Parks Staff research, develop and negotiate the terms of the acquisition of the privately owned water rights currently leased on Cedar Creek for the purpose of changing them permanently to instream fishery use. Motion carried.

23. Shields River Water Rights Acquisition – Endorsement. Chris Hunter, FWP Fisheries Division Administrator, explained that an owner of a small irrigation water right from the Shields River, tributary to the Yellowstone River near Livingston, has offered to donate that water right to FWP. The water right is a decreed right for diversion of 0.58 cfs for irrigation of 7 acres. The water right is diverted through a ditch shared by several other water users. FWP is working with the owners of the Chadborn irrigation diversion in the same area of the Shields River to rehabilitate their diversion to allow for fish passage. This project may eventually include the capture and genetic testing of trout migrating upstream. If FWP does not accept the rights, the owner give it to a neighbor.

Action: Vermillion moved and Workman seconded the motion that Montana Fish, Wildlife and Parks Staff research, develop and negotiate the terms of the gift of the Shields River water right for the purpose of changing them temporarily to instream fishery use or other uses beneficial to the Department. Motion carried.

24. Water Petition Process - Tentative.

- * **Swan Lake No Wake Zone Petition - Tentative**
- * **Echo Lake near Big Fork No Wake Zone Petition - Tentative**
- * **Echo Lake in Granite County No Wake Zone Petition - Tentative**

Jim Kropp, FWP Enforcement Division Administrator, Becky Jakes Dockter, FWP Legal Counsel, Jim Satterfield, FWP Region 1 Supervisor, and Lee Anderson, FWP Region 1 Warden Captain, presented the water safety petitions. The no-wake speed is the speed at which no water vessel leaves waves.

Becky Jakes Dockter explained the process regarding water safety restriction petitions. She stated that existing Administrative Rules of Montana restrict lakes greater than 35 acres, and in the western fishing district, or west of the continental divide, to a controlled no wake speed from shoreline to 200 feet from the shoreline all the way around the lake and around each island shoreline. As an exception to this general rule, personal watercraft which must maintain a certain minimum operating speed to

remain upright and maneuver in the water may travel at that minimum operating speed even if it creates a wake as long as they follow the most direct route through the 200 foot no wake zone around the entire shoreline and island shorelines. Motorized watercraft towing a water skier from or to a dock or the shore may exceed the controlled no wake as long as they travel the most direct route through the no wake zone to and from the dock or shore.

Swan Lake

Last year these same petitioners requested this same no-wake zone for a one-mile section of Swan Lake. The Commission's recommendation at that time was to not pursue rulemaking, but to increase enforcement on the lake. The Region recommends consideration of rulemaking for less than the entire mile, and to make it $\frac{3}{4}$ of a mile. Justification for consideration is substantial use and a relatively narrow area.

Chairman Doherty asked for public comment.

Peter Leander, Swan Laker, said there is already significant use of the lake, and a large development at the mouth of the river is proposing to put in 24 boat slips. There is no other body of water like this anywhere in the state. It undulates in depth and is treacherous for boats. The main use is rafting and swimming, and there are goose nests on the islands. Jet skis can be driven slowly enough to stay upright and no create a wake. They support this FWP proposal. They would buy and maintain the buoys, but wish to work out liability issues should someone run into a shallow area. Swan Lakers may even be willing to contribute money to install and maintain the buoys if need be.

Anderson said liability can be investigated further, but if people are acting on behalf of FWP, there should be no liability issues.

Bob Sleight, Swan Laker, said the situation has become dangerous. There are near-misses and the 200 foot no-wake zone is ignored. A simple posting could slow the whole bay down. He is concerned about the influx of boats that will come with the new development.

Richard Davies, Swan Laker, said use of lake has increased and it is prudent to put in no-wake zone before an accident happens. He supports the modified proposal.

Eric Thueson, Swan Laker, shared concerns about increased boat traffic by the new development, about increased bank and shoreline erosion, and the increased safety hazards. They are asking for preventative measures.

Action: Workman moved and Vermillion seconded the motion to deny the petition for a no-wake zone within the one-mile section from the northern outlet of the Swan River. I move to endorse the Department's proposal to initiate rulemaking for an intermediate measure to define the no wake area as the area from the outlet of Swan Lake to the southern most tip of the southern most island, approximately $\frac{3}{4}$ of a mile from the outlet of Swan Lake as marked with no-wake buoys to be provided at the expense of the petitioners and maintained by the petitioners. Motion carried.

Echo Lake near Bigfork

Several petitions were submitted with a variety of requests for Echo Lake. Two years ago, enforcement changes were made to address the many complaints received from anglers and boaters etc. The Region notified the public that FWP was going to start enforcing the 200-foot regulations, and substantial citations were issued. Warden Captain Anderson said the 200-foot no-wake zone creates closed areas that used to be open.

Requests are summarized as follows:

Bloomquist Petition:

- * Enforce the 200' no-wake rules
- * Modify interpretation of current rule to allow motorized craft to pull skiers into bays
- * Exempt Echo Lake from the rule or modify rule to enable motorized craft to operate on Echo Lake though any connecting corridors

MacLennan Petition:

- * Modify 200' no-wake rule to allow property owners to ski/wakeboard/tube to and from their dock or shoreline and out of bays where they own property
- * Confirm that Echo Lake not be subject to any wakeless designation, except as revised by the Commission

Glain, Lacey, Trumbell Petition:

- * Retain the no-wake restriction limiting all watercraft to a controlled no-wake speed from shoreline to 200' from shoreline
- * Establish a no-wake zone in the Echo Lake Bay known as Hilley Pass

O'Cain Petition:

- * Increase the no-wake zone on the southern end of Petersen Lake to start at the north $\frac{3}{4}$ of the bay starting and including all waters south of that point.
- * Increase the no-wake zone to include the shallow southern end of Abbott Lake

Chairman Doherty asked for public comment.

Susan Taylor, Doney Law Firm, representing the MacLennan petitioners, said prior to August 2006, there was no enforcement. The petitioners support FWP's recommendation, however they want to get into the two bays – Blackies and the Causeway. What could be done is to draft rules to exempt all users and not just homeowners.

Rowland Day, Bigfork, said prior to 2006 there were no problems on the lake. The safety issues will become immense if folks coming from the Blackie area are forced to stop and start in the channel. He is opposed to modification of the 200-foot rule. If the Commission exempts these three lakes, he asks that the commission exempt ingress and egress from their docks during the summer.

Bill Tanner, Big Fork, supports the 200-foot wake requirement. Many boats travel past his house at Deer Island where he lives year round. Ninety percent of the fishermen that come there don't live on the lake. He said it is not an epidemic of skiers. If the commission makes an exemption for three islands, why not the whole lake?

Dia Hollinger, Bigfork, suggested exempting Hilley Pass as the smaller passages are almost impassable.

Becky Jakes Dockter reiterated that the rule says “direct route”, and cannot be interpreted to go through no-wake zones. Some will say they are always going to or from a dock or shore. The rule is clear enough and the interpretation by the landowners has been misinterpreted.

Kropp said in western Montana the lakes have the 200-foot rule, and the rest of the state has public access points that have 200-foot zones that people cannot ski from. There are also narrow corridors that are restricted due to congestion.

Satterfield said this is one of the best fisheries in the region with substantial fishing pressure that coincides with ski season. Anglers complained, and that is what precipitated enforcement in the first place. The majority of fishermen come from other places – do not live there.

Action: Colton moved and Workman seconded the motion to direct the Department to initiate rulemaking to exclude the upper three islands in southwestern corner of section 5 from the 200 foot no-wake rule to establish an above wake speed travel corridor, and to initiate rulemaking to establish an above wake speed corridor in Blackies and Causeway Bays. Motion carried.

Echo Lake – Region 2 – Granite County

Echo Lake is surrounded by Forest Service lands. There is one small fishing access site that is a day use area. There is no public boat ramp, so motorized activity comes from cabin owners, therefore the conflict is between homeowners and does not involve the general public. Georgetown Lake is close, and it was suggested that boating activities could occur there rather than on Echo Lake. The Region feels that the cabin owners need to get together and work this out rather than implement a rule.

Chairman Doherty asked for public comment.

Erin Maclean, Luxan and Murfitt Law Firm, stated she was hired by landowners who are opposed to this petition. She said the Region indicated there has been no increase in use on the lake, no significant boating issues, no public safety issues, and no wildlife issues. The homeowners she represents claim the lake is usually quiet, and skiers are courteous. One of her clients, Joann Puchinelli, said that in the past, concerns were always handled with open dialogue.

Brad Funston, cabin owner from Cody, WY, said he has owned his cabin since 1958, and has been water skiing there since 1968. He said one third of the properties are fee owned, and two thirds are Forest Service leased. He became aware of the petition in September, and after talking to several cabin owners, it was discovered they were not made aware of the petition either. He stated that he was speaking on behalf of fee owners who felt they should be the ones to make the decision. Access has been shut off except for landowners. There is little motorized activity, no erosion due to grass along the shores, and no safety issues.

Aaron Funston stated that BLM had published an EA that indicated there is suitable habitat for migratory birds on Echo Lake that is unaffected by motorboat useage.

Brent Kautzman, cabin owner, said their cabin was built in the 1920s and he learned to water ski there. He and his family just purchased a new boat and want to continue to ski and boat there, and not have to go to Georgetown Lake to do so.

Action: Workman moved and Vermillion seconded the motion to deny the petition. Motion carried.

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Workman asked if the Commission can precipitate any action to accelerate the delisting of the grizzly bear in Montana so FWP can manage them and hold a hunting season on them. He suggested that the Commission direct FWP to send a letter to the USFWS and to the Congressional Delegation asking them to do something to expedite the delisting.

Director Hagener suggested that the Commission submit a resolution to the USFWS and Congressional Delegation.

Vermillion said he supports a resolution toward delisting, however he is concerned that it might be construed as putting pressure on scientists who have been working very hard to determine the populations' status. Expediting may cause more litigation. Sometime rushing things is not the best solution.

Hagener said Congress removed the earmarking on funding to conduct DNA studies, so we don't know if there is sufficient money. Federal funding is necessary as DNA studies and monitoring are costly.

*Action: Workman moved and Colton seconded the motion to direct FWP to prepare a resolution for Commission review and potential signing where the Department would encourage the USFWS to expedite their efforts on delisting the grizzly bear, and to encourage the congressional delegation in any way possible toward delisting. Motion carried.*

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Workman asked if the Commission has any say in placement of the bear that was killed on Highway 200. Children from the Ovando and Lincoln schools have requested that it remain in their community. He suggested it be located at Lincoln Ranger Station.

Hagener said the Department has received many requests for the bear. Since it is listed as an endangered species, a process must be gone through. The Department is looking into it.

25. Open Microphone – Public Opportunity to Address Additional FWP Issues.

Steve Ortez, Great Falls, stated he has a problem with outfitters taking over. There are too many of them. Places are leased and locked up and bought out. Residents are taking a backseat to out of-staters, when they should come first. He doesn't like the idea of special permits, and there should be no A9s or B12s.

Action: It was moved and seconded to adjourn the meeting. Motion carried.

Meeting adjourned at 3:15 p.m.